

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO. 1 OF 2004
IN
CIVIL REVISION APPLICATION NO. 474 OF 2003**

Raman Hiralal Zawar ..Petitioner
versus
Special Land Acquisition
Officer & Ors. ..Respondents

Mr. P. M. Shah for the Petitioner.

Mr. S. V. More, AGP for the Respondents.

CORAM : D. G. DESHPANDE, J.

DATE : 28TH SEPTEMBER, 2005

ORAL ORDER :

1. Heard Mr. P. M. Shah for the Petitioner
and learned AGP for the Respondents - State.

2. This Review Petition is filed in Civil
Revision Application No. 474 of 2003, that was
converted from First Appeal Stamp No. 23862 of
2002. The Revisioning petitioner and the present
petitioner is the same. Revision petition was filed
challenging the order of the Reference Court

dismissing the Reference by Judgment dated 8.3.2002 on the ground of limitation. When the Revision came before me for hearing, nobody appeared for the petitioner and after hearing the learned AGP, I also dismissed the Revision Application. Therefore, this Review Petition.

3. Without going into the technical aspect whether Review is maintainable or not, Revision was admitted and taken up for final hearing, today, after giving notice to the other side.

4. Admitted and undisputed facts are that the Award in this case came to be passed on 15.7.1989 in the proceedings before the SLAO. Petitioner had appeared and raised objection. Thereafter the notice was given to the petitioner by the Collector under Section 12. The same was received by him on 4.3.1990. Reference came to be filed on 28.5.1990. Point of limitation was raised by the State before the Reference Court and after considering all the aspects of the matter and the relevant provisions, and, particularly, provisions of Section 18(2) of the Land Acquisition Act, and relying upon judgment of the Supreme Court reported in AIR 1963 Supreme Court 1604 State of Punjab vs. Mst. Qaisar Jehan Begum & Anr., the Reference Court rejected the Reference.

5. Mr. Shah now arguing for the petitioner contended even though notice was served upon the petitioner, as stated above, on 4.3.1990, he had to apply for certified copy because without certified copy he could not have filed the Reference. Therefore period spent in obtaining certified copy was required to be excluded. He relied upon four judgments, viz:

1) AIR 1963 Supreme Court 1604 State of Punjab vs. Mst. Qaisar Jehan Begum & Anr. (referred to and relied upon by the Reference Court;

2) AIR 1977 Supreme Court 523 Commissioner of Sales Tax, U.P vs. M/s. Madanlal Dan and Sons.

3) Judgment of this Court (Justice Kakade) reported in 2004(4) Mh.L.J. 216 Govind Kanu Madhavi since deceased through his L.Rs. Kamal Dattu Madhavi & ors. vs. Special Land Acquisition Officer, Panvel.

4) Judgment of this Court (Justice Rebello) reported in 2000(1) Mh.L.J. 256 Special Land Acquisition Officer, Bombay vs.

Harichandra Ramji Patil & Ors.

According to Mr. Shah mere receipt of notice by the petitioner was not sufficient and the petitioner in order to get knowledge of the contents of the Award was required to obtain certified copy. He also contended that the judgment of the Supreme Court reported in AIR 1963 Supreme Court 1604 was about Section 5 of the Limitation Act and Section 12 was not considered.

6. Limitation so far as Land Acquisition Act is concerned, has been provided in Section 18 sub Section (2) :

18. Reference to Court.- (1) *Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.*

(2) The application shall state the grounds

on which objections to the award is taken:

Provided *that every such application shall be made, -*

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases within six weeks of the receipt of the notice from the Collector under Sec. 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

As rightly held by the court below there are three points of starting the period of limitation, viz.

(1) if the person is represented within a period of six weeks from the date of Collector's Award;

(2) If the notice under Section 12(2) is issued then within six weeks of receipt of the notice; and

(3) Six months from the date of the Collector's Award i.e. from the knowledge of the Collector's Award.

7. Reference Court found that in fact in his own application i.e. in Reference the petitioner has contended that he has filed petition before the Acquiring Authority on 31.8.1987, which clearly showed that the petitioner was aware of the proceedings before the Collector. Even even after giving concession to the petitioner, the second aspect was considered by the court.

8. Award came to be passed on 15.7.1989 and notice was received by the petitioner on 4.3.1990, therefore according to the trial court the matter was covered by the second point, noted above, i.e six weeks from the date of receipt of notice. In paragraph 14 the trial court considered different judgments and also considered different judgments of the Supreme Court reported in AIR 1963 S.C. 1604, where the period of limitation as per Section 12(2) and in case of notice is within six weeks from the date of notice.

9. It will be clear that Section 18(2) is clear so also judgment of Supreme Court reported in AIR 1963 S.C. 1604. In that case before the Supreme

Court the petitioner was not present nor was represented before the Collector when the Collector made his Award. Therefore, the first condition did not apply. Supreme Court also noted that the second clause was also not applicable because the respondent did not receive any notice from the Collector under Sub Section 2 of Section 12, therefore, the case before the Supreme Court was of the third category, and, this clearly distinguishes the present case from the case relied upon by Mr. Shah. When petitioner was served with the notice on 4.3.1990 he has to and he should have filed a Reference within six weeks therefrom.

10. Second Judgment relied upon by Mr. Shah is Judgment of Supreme Court reported in **AIR 1977 S.C. 523 Commissioner of Sales Tax, U.P. vs. M/s. Madanlal Dan and Sons, Bareilly**. The question of limitation is considered by the Supreme Court in paragraph 11 and what is stated therein is as under:

"It is plain that since 1928 when the Judicial Committee decided the case of Surty (AIR 1928 PC 103) which has been consistently taken by the Courts of India is that the provisions of Section 12(2) of the Limitation Act would apply even though the copy mentioned in that sub-section is not

required to be filed along with the memorandum of appeal."

This is the only observation of the Supreme Court with reference to the Limitation Act. No provisions of Land Acquisition Act were under consideration. There was no question of any another certified copy being filed along with the appeal. Question before the Supreme Court in that case was under the U.P. Sales Tax Act and the specific question was: *"Whether the time taken by the dealer in obtaining another copy of the impugned appellate order could be excluded for the purpose of limitation for filing revision under Section 10(1) of the U.P. Sales Tax Act when one copy of the appellate order was served upon the dealer under the provisions of the Act?"* Therefore, it is clear that the question before the Supreme Court in that case is totally different from the question that is involved. This case, is of no help to the petitioner. It does not apply to the facts of the case.

11. Third judgment relied upon by Mr. Shah under the Land Acquisition Act Section 23 and 18(2) reported in 2004(4) Mh.L.J. 216. In that case the matter came to the High Court, AGP raised objection of limitation. This point was not taken by the State in the Reference nor any opportunity was given

to the claimant to meet the said objection. This court therefore said that in this view of the matter question of limitation cannot be considered only as a pure question of law but it was mixed question of law and facts. Then it was observed that these questions can also be looked into from altogether different angle, and, then it is said that the notice of the Award was received by the claimant and Reference under Section 18 was filed after the period of six weeks or 42 days, still unless and until claimant receives the copy of the Award, it would not be possible for him to determine whether it would be necessary to file Reference or not. Therefore, in my view, claimant cannot be non suited on such technical ground especially in absence of any opportunity to him to meet the allegations at the trial stage.

12. In the present case, the objection to the limitation was raised by the State at the very threshold, issue was framed by the court. Parties after fully understanding the objection made their submissions. According to the State when receipt of the notice under Section 12 is admitted by the petitioner then the period of limitation as per Condition No.2 is within six weeks and when Judgments are clear in this matter that under Section 18(2) there are three starting points for

limitation then that specific Judgment of the Supreme Court would apply. Therefore, this judgment cannot be made applicable.

13. Lastly, Mr. Shah relied upon the judgment of this court reported in 2000(1) Mh.L.J. 256. In that case claimant died during the pendency of the Reference before the Court and the question was whether and who should apply for bringing his legal heirs on record and what would be the period of limitation, therefore it is clear that the question before the Single Bench of this Court was totally different. The question of limitation with reference to Reference under Section 18 of the Limitation Act was not directly or indirectly or even remotely concerned.

14. For all these reasons, I do not find any case for review. The Review Petition is dismissed. No order as to costs.

28.9.2005

(D.G. DESHPANDE, J.)